

**This list of proposed changes to the Brownfields Site Assessment Grant (SAG) rule was distributed at the 9/23/03 Brownfields Study Group Meeting. It is being made available to interested parties for comment before the Department prepares the draft rule changes for the Natural Resources Board. Comments or questions about these proposed changes should be sent to:**

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## **Summary of Possible SAG rule changes- ch. NR 168, Wis. Adm. Code**

### **Cleanup and Clarifications ----**

#### **a) NR 168.03(3)**

Change note for "eligible site or facility" to new definition in 292.75(1)(a) which was changed in the 2001-2003 budget (2001 Wisconsin Act 16):

"Eligible site or facility" means one or more contiguous industrial or commercial facilities or sites with common or multiple ownership that are abandoned, idle, or underused, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

#### **b) NR 168.03**

Include a definition of "environmental contamination" to clarify that only sites with actual or perceived discharges of hazardous substances in the environment would be eligible. Sites with only intact asbestos or lead paint in a building would not be eligible.

#### **c) NR 168.03**

Include a definition for "past costs". This definition would be as follows: "past costs" means costs and services outlined in NR 168.09 which were incurred within the 5 years prior to the application due date by any local governmental unit. Past costs do not include ineligible costs outlined in s. NR 168.19 or costs that have been or will be reimbursed by any grant program or pledged as matching funds under the Site Assessment Grant program for a grant awarded in a previous round.

#### **d) NR 168.07(1)**

Remove this requirement that 50% of the funds be appropriated in the first year of the biennium. This would allow the Department more flexibility in determining when grant application rounds should be established and will allow consideration of demand for grants when determining allocation of funds.

#### **e) NR 168.07(2)**

Modify the split between large and small grants so that at least 40% shall be designated for large grants and 60% for small grants.

#### **f) NR 168.07(3)**

Modify this section to clarify that if there are additional funds remaining or unused funds that become available that those funds can be used to fund any of the following: existing eligible applications that were not funded because they did not score high enough, partially funded grants, new applications that are accepted, or grant amendment requests that are submitted.

#### **g) NR 168.09(4)**

Change section so that it is consistent with statutory changes made in the 2001-2003 budget (2001 Wisconsin Act 16) to clarify that asbestos abatement is eligible cost only if undertaken as part of demolition. This was changed in statute, s. 292.75(3)(d). Change section to read similarly to statute: (4) Asbestos abatement activities, as defined in s. 254.11 (2), conducted as part of activities described in par. (2).

#### **h) NR 168.11(1)(c)**

This section should be revised to clearly explain the requirements for an acceptable resolution that must be submitted with the application. The rule change clarify that the resolution must be signed and adopted by the governing body of the applicant. In addition, the rule should require that the adopted resolution must be submitted to the DNR within 30 days of the application due date for the application to be considered complete. The rule should also specify that resolutions which were adopted over one year before the application date will not be acceptable and that resolutions must specify they are for the Site Assessment Grant program; resolutions adopted for other grant programs will not be acceptable.

**i) NR 168.11 & 168.21(4) Note**

Change the address where applications should be sent and where reimbursement forms can be obtained to the RR program.

**j) NR 168.11(4)**

Change this section to add the word “inadequate”. The revised sentence should read, “Applications that are determined to contain inadequate, incorrect, or inaccurate information shall be considered incomplete.”

**k) NR 168.17**

Cancellation of delinquent taxes – Change the rule to clarify when and how the cancellation of taxes could be counted as past costs and as matching funds. Under the current rule, canceled taxes are only allowed as part of acquisition costs. Under ss. 75.105 and 75.106, Stat., counties can incur the costs to cancel taxes when the applicant (city or county) is not acquiring the property, this should be changed so that canceled taxes are a separate items to be included in the list of activities eligible for match.

**l) NR 168.17**

Change this sentence to clarify that matching funds can be incurred by any local governmental unit not only the applicant. The language in this section should be changed to “....funds incurred during the grant period by any local governmental unit and include:”

**m) NR 168.19**

PECFA – Change the rule so that site investigation expenses are not eligible for reimbursement for sites that would be eligible to receive reimbursement from the PECFA fund. This could be addressed by adding a new subsection to s. 168.19; “Costs to conduct a site investigation if the eligible site or facility is eligible for reimbursement from the Petroleum Environmental Cleanup Fund (PECFA) under ss. 101.143 and 101.144, Stats.”

**n) NR 168.19(2)**

This section says that costs reimbursed by other local, state, or federal grant programs are ineligible for a SAG or to count as matching funds. This section should be changed to clarify that costs that will be reimbursed by any other federal, state, or local grant are also ineligible. This section should also be changed so that costs that have been or will be reimbursed by programs such as agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program are also not eligible.

**o) Multiple Grants**

Clarify how sites that have already received a grant can come in for more than one grant in different rounds. As under the current rule and under these proposed changes, applicants can be awarded more than one grant for the same site or facility in different application rounds. However, the following new limitations must be met:

- The current rule (168.13(2)(e)) says that past cost points are only for costs and services that have not been reimbursed by any other grant programs. The proposed rule changes would add a definition of past cost (see item C above) to modify this limitation to specify that an applicant cannot earn points for past expenses for costs have been or will be reimbursed by any grant program (including the SAG program) or pledged as matching funds under SAG for a grant awarded in a previous round.

- **168.19** – Specify that the costs claimed as matching funds for one SAG are ineligible for reimbursement or to count as matching funds for another SAG (this could potentially occur if the grant periods overlapped).
- **168.21** – Add a new grant condition that requires if more than one grant is awarded for the same site or facility, the grant awarded first must be closed out before reimbursement can be obtained for an additional grant.

**p) NR 168.21 (2)**

This section requires that applicants provide proof of legal access within 90 days of being notified that they will get a grant. This section should be changed to 60 days.

**q) NR 168.21(11)**

Change this section to specify that the final report be submitted on forms provided by the department.

**Proposed Revisions to Scoring Factors – NR 168.13**

	<b>Factors</b>	<b>Points</b>	<b>Status</b>
	Site is located within 1200 feet of public or private drinking water supply well.	10	Modification of previous factor, split criteria (a) into two and modify distance
	Site is located within <b>500</b> feet of a school, park or residence	10	Modification of previous factor, split criteria (a) into two and modify distance
	The site or facility has contamination or hazard either of which is readily accessible to the public. If the hazard or contamination is still present and readily accessible at the site or facility and the applicant has taken action to limit access, points can also be awarded.	15	Modification of previous factor
	Local government has title to site or facility (20 points) or Local government has initiated formal acquisition process (10 points)	10 or 20	No change
	Site or Facility will be under the ownership of a local governmental unit or non profit organization and will be used by the general public	5	Slight modification from previous factor to clarify that site does not need be owned by LGU or non-profit at time of application for points.
	Sites or facilities that are vacant or abandoned at the time the application is submitted. Properties that are occupied with operating businesses or other active uses will not qualify for these points.	10	New
	Bonus Points- One time bonus points for large and small applicants.	29	No change
	Excess Match – points awarded for additional pledged matching funds beyond minimum 20%. Matching funds can be for grant eligible activities and other actions that count towards match.	1 point for each additional 4% (20 points max)	Modification from previous factor; maximum allowable points reduced from 40 to 20 and 1 point earned for 4% (current rule is 1 point for 2%).
	Past Costs – See new definition of “past costs” which would now only include grant eligible activities incurred by any local governmental unit. Matching funds costs including acquisition costs, canceled taxes, maintenance, remediation, etc. could no longer count as past costs. Five points shall be awarded if \$2,000 or more in past costs were incurred. In addition, one point shall be awarded for every \$3,000 in past costs. <i>For example, if there was a \$30,000 grant request and there were \$30,000 in past costs, then the application would earn 15 points (5 + 10).</i>	5 for over \$2000 in past costs + 1 for each \$3,000 in past costs. (Max 15 points)	Modification from previous factor.
	The site or facility is on a property that is currently tax delinquent or that was tax delinquent at the time it was acquired by a local government or other party.	5	New
	Applicant is planning to conduct Phase 1, Phase 2, environmental investigation, or environmental remediation activities during the grant period.	10	New